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No. 420.
Brf. of Trude for Motion to Admit to Bail.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

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FRED LEE RICE, FRANK RUTLEDGE AND THOMAS JONES

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

BRIEF OF APPELLANTS ON MOTION TO ADMIT TO BAIL.

S. H. TRUDE,
ATTORNEY FOR APPELLANTS.

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Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

Brief of Appellants on Motion to admit to bail.

MAY IT PLEASE THE COURT:

The motion of appellants praying that this Honorable court fix a reasonable amount of bail herein, and that they be admitted to bail pending the appeal in this case should be granted.

They demanded bail before the extradition commissioner, and he denied their motion. (Rec., 16.) They prayed in their petition for the writ of habeas corpus for bail. (Rec., 16.) After the appeal was prayed and allowed, a supersedeas granted, a citation issued and served, the appellants moved the District Court herein to be admitted to bail, which motion was also denied and ruling then and there excepted to. (Rec., 48.)

The second section of rule 34 of this court provides:

> "Upon the appeal from the final decision of any court or judge discharging the writ after it has been issued, the person shall be remanded to the custody from which he was taken by the writ, or shall for good cause shown be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided."

The words "hereinafter provided" refer to the surety, etc., third section, rule 34.

In the case of *Hudson* v. *Parker*, 156 U. S., 281, section 2 of rule 34 was discussed, and, among other things, this court said:

> "That under section 917 of the Revised Statutes of the United States this court has power to regulate the manner of proceeding or mode of process in taking bail; that the statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail not only after arrest and before trial, but after conviction pending a writ of error.
>
> That the statutes as to bail provide that bail may be admitted upon all arrests in capital cases, and shall be admitted upon all arrests in other criminal cases. (Revised Statutes, United States, 1,014–1,016."

Article 8 of the amendments to the federal constitution is "Excessive bail shall not be required."

The inference being that bail is proper in all cases.

Section 1,015, Rev. Statutes, U. S., provides:

> "Bail shall be admitted upon all arrests in criminal cases when the offense is not punishable by death."

Sect. 7 Article 2 of the constitution of the State of Illinois provides:

> "All persons shall be bailable by sufficient sureties except for capital offenses, where the proof is evident or the presumption great."

Paragraph 545 of the Criminal Code of the State of Illinois, Starr & Curtis' Revised Statutes, p. 1,379, provides:

> "If it appears that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense is bailable by the judge or justice of the peace, and the prisoner offers sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail is offered, or the offense is not bailable by the jndge or justice, the prisoner shall be committed to jail for trial."

Section 4 of the Fugitives from Justice Act in force in Illinois at the time of appellant's arrest was as follows:

> "If, upon examination, it shall appear to said judge, justice or police magistrate that said person is guilty of the offense alleged against him, it shall be the duty of such judge, justice or police magistrate to commit him to the jail of the county, or if the offense is bailable according to the laws of this state to take bail for his appearance at the next Circuit Court to be holden in that county, except in the County of Cook the recognizance shall be for the appearance of the accused to the next term of the Criminal Court of Cook County."

Section six of the treaty between the United States and Great Britain proclaimed March 25, 1890, is:

> "The extradition of fugitives under the provisions of this and of the said tenth article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering state."

There is nothing in this record showing that the appellants would not be entitled to be admitted to bail were they now in Canada and under arrest for the alleged offences, and if there was, I claim it would not change the rights of the appellants under our laws and rule 34 of this court which makes no exceptions in habeas corpus cases.

The argument that the treaty does not expressly provide for bail, and to admit to bail would be fixing a price for allowing an escape never was sound and especially in this age of advancement.

1st. I claim that the treaty does not militate against the right of bail.

2d. We owe no greater duty to a foreign power to deliver fugitives from justice than we do to a sister state —and the state statutes auxiliary to the Acts of Congress allowing bail in such cases have always been upheld.

3d. Such argument might be competent to urge for a repeal of our constitutions and laws, but courts will construe the laws as they are now in force, allowing prisoners to be admitted to bail, and I believe this court has never passed on the question of bail in an international extradition case before.

4th. To admit to bail is not to fix the price of liberty at this late day and if so (Wharton's Crim. Pl. & Pr., 9 Ed., Sec. 74.), such argument applies to every case.

Wharton *supra*, after stating that bail was granted at common law, says bail in extradition cases should be granted: "For no longer exist those strong temptations to break bail and fly which existed when Blackstone wrote. A fugitive from justice is now pursued to his place of refuge not merely by government but by

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sureties and the probabilities of ultimate escape are much diminished," and the learned author cites the case of Jefferson Davis' being admitted to bail when under indictment for treason.

Sec. 76, *supra*.

The construction of treaties is for the courts.

U. S. v. *Rauscher*, 119 U. S., 419.

The appellants have the right to appeal to this court. I assume that this court will pass upon the merits of this case when regularly reached on the calendar in the usual way. Is it right and lawful then that the appellants should undergo further imprisonment pending the hearing, and be deprived of their liberty even before indictment when prisoners are allowed bail even after conviction?

Respectfully submitted.

S. H. Strude

Atty. for Appellants.